60-2185

3 JUN 1960

Mr. Gordon Gray
Special Assistant to the President
for National Security Affairs
The White House
Washington 25, D. C.

Dear Mr. Gray:

On May 2, during our discussion on safeguarding classified information, you asked me to send to you the legislative proposals which have been under study by Mr. Lawrence R. Houston, our General Counsel. I have been concerned for some time over the lack of effective statutory protection against the unauthorized disclosure of classified information and especially information on intelligence sources and methods for which I, as Director of Central Intelligence, am specifically responsible under section 102 of the National Security Act of 1947.

The protection available to us and others under the Espionage Act (sections 791-798 of title 18, United States Code) has serious limitations. Our experience as well as that of other agencies shows that prosecutions under the Espionage Act entail problems of proof such as the presentation of classified information in open court which, as a practical matter, make it impossible in most cases to proceed. In pursuing our studies, we have looked into the possibilities of using some parts of the British Official Secrets Act. While British law and procedure give certain advantages in their prosecutions of cases involving classified matters, I am afraid that in this country our courts would consider them as unconstitutional and, consequently, I believe we cannot use their experience to advantage.

The enclosed proposal, I believe, would be a definite aid in controlling the unauthorized release of classified intelligence information. It draws upon existing statutes designed for the protection of various types of Government-held information and has been shaped to fit the particular needs of the intelligence community. We recognize, however, that there are practical difficulties in any legislative proposals which may appear to strengthen the Government's hand in withholding information from the public. We also recognize that the statutes on which our proposals are based have not been adequately tested in the courts. Nevertheless, I believe that we have a good case for seeking more protection for information on intelligence, including sources and methods, and even if there are loopholes the fact that such legislation is enacted, should it be enacted, would in itself act as a deterrent to those who would purposely or inadvertently pass information to unauthorized persons.

WHITE HOUSE FILE White House

We have recently discussed the subject in some detail with two members of our Subcommittee of the House Armed Services Committee, Bob Wilson of California and A. Paul Kitchin of North Carolina. They are deeply concerned by the lack of protection of classified intelligence information and have expressed willingness to do whatever can be done to help inform appropriate members of the Congress of the problem and to assist in the passage of any appropriate legislation. They are aware of some of the problems set forth above but believe that if legislation which is truly useful can be proposed its passage could be achieved.

Sincerely,

Allen W. Dulles
Director

Enclosure

OGC:MCM:jem (27 May 1960)

Orig & 1 - Addressee
1 - DCI
1 - DDCI
1 - ER
1 - IG
1 - D/Security
1 - C/CI
1 - Legislative Counsel
General Counsel

The following proposed legislation is designed to more adequately protect classified intelligence information, including information on sources and methods. The citations in the margin refer to existing legislation on which the proposed wording is based.

1. Protection of Intelligence Information

a. Whoever, being an officer, employee, contractor, or person acting for or on behalf of the United States or any department or agency thereof by virtue of his office, employment, position, contract or other relationships becomes possessed of intelligence which is by law, executive order, or by the rules or regulations of the department or agency required to be withheld from release or publication directly or indirectly imparts, discloses, publishes, divulges or makes known in any manner such intelligence, or any part thereof, to any person not entitled under the law or the rules and regulations of the department or agency to receive the same, shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

b. No person shall be deemed guilty of a violation of any such rules, unless prior to such alleged violation he shall have had knowledge thereof.

c. Whoever lawfully possessing intelligence, as referred to in "a" above, as a part of his official duties before imparting such intelligence to another person is required to determine and verify that such other person is lawfully entitled to receive such information.

2. Injunction Proceedings

Whenever, in the judgement of the Director of Central Intelligence, any person has engaged or is about to engage in any acts or practices which constitute an unauthorized disclosure of intelligence sources and methods or any intelligence as defined below or which will constitute a violation of the espionage laws (chapter 37 of title 18, United States Code) or any regulation or order of the Director of Central Intelligence issued pursuant to his responsibility under section 403(d)(3) of title 50, United States Code, for the protection of intelligence sources and methods, the Attorney General, on behalf of the United States, may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such regulation or order, and upon showing by the Director that such person has engaged or is about to engage in any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. It shall not be necessary as a part of the record in such application to include the intelligence sought to be protected.

3. Definitions

a. The term "intelligence," for the purposes of this act, means data, information, materials, facts, statistics, analyses, written and unwritten, and photographs acquired, obtained or used by intelligence activities and operations of the Government concerning foreign countries and foreign nationals in the preparation and transmission of intelligence reports and includes (1) the reports and information produced from the use of such intelligence and (2) all procedures, equipment, devices, and methods used in the collection and production of intelligence.

b. The term "classified" as applied to the intelligence described in section "a" means that at the time of a violation of this section, such intelligence is for reasons of national security specifically designated by a United States Government agency for limited or restricted dissemination or distribution. 18 USC 798

c. The term "foreign government" includes in its meaning any person or persons acting or purporting to act for or on behalf of any faction, party, department, agency, bureau, or military force of or within a foreign country, or for or on behalf of any government or any person or persons purporting to act as a government within a foreign country, whether or not such government is recognized by the United States. 18 USC 798

d. The term "unauthorized person" means any person who, or agency which, is not authorized to receive information of the categories set forth in subsection "a" of this section, by the President or by the head of a department or agency of the United States Government which is expressly designated by the President to engage in intelligence activities for the United States. 18 USC 798

e. Nothing in this section shall prohibit the furnishing, upon lawful demand, of information to any regularly constituted committee of the Senate or House of Representatives of the United States of America, or joint committee thereof. 18 USC 798

4. Classified Intelligence

Whoever knowingly and willfully communicates, furnishes, transmits, or otherwise makes available to an unauthorized person, or publishes, or uses in any manner prejudicial to the safety or interest of the United States or for the benefit of any foreign government to the detriment of the United States any classified intelligence as described in section 3 of this Act shall be fined not more than $10,000 or imprisoned not more than ten years, or both. 18 USC 798

Doc-4157

31 MAY 1960

MEMORANDUM FOR THE RECORD

SUBJECT: Espionage Laws

1. Congressmen Bob Wilson (R., Calif.) and A. Paul Kitchin (D., N. C.) had expressed interest in the law protecting confidential information and the British Official Secrets Act. Mr. Warner and I met with them on 25 May to review the whole area. I started off with the proposal that unless they wanted detailed discussion of the history and background of our espionage acts I would go into the major current problems and description of the British experience. The congressmen thought they had enough general background. The two aspects of the general espionage statutes which cause the most trouble are the fact that they deal with information relating to the national defense and require an intent to harm the U. S. or aid a foreign power. The intent, of course, involves difficulties of proof, but the evidence required to demonstrate that the information relates to the national defense raises very serious security problems. In many cases, to prove that the information does in fact relate to the national defense would require the Government to put into evidence the very information it is trying to protect. This requirement has led to many decisions not to prosecute in cases where there is reasonably conclusive information that a violation of the act has occurred.

2. I pointed out that the British concept is fundamentally different and is based on the theory that official information is the property of the crown and, therefore, privileged. Thus, any unauthorized release is technically a violation of the Official Secrets Act but, of course, as a political matter the act would only be applied in those cases where there is a serious need to protect the information. When a case arises that is deemed sufficiently serious the British system has some tools for prosecution which are in the judgment of American lawyers not permissible under our constitution. I described the ISIS case and particularly the fact that it was necessary in open court only to give evidence that the article published contained information

obtained by the defendants in their official capacities. Upon a verdict of guilty the prosecution was then able to approach the court without others present and demonstrate what portion of the information was important to the defense of the realm in order to inform the court in connection with the sentencing. In some cases where the prosecution deems that evidence to be given during the trial needs protection, the court can approve the prosecution's request to hold that portion of the trial in camera. This again is not acceptable in this country. Another tool is a presumption that if a person having knowledge of official information requiring protection is known to have been in contact with a foreign agent the classified information is deemed to have been passed to that agent. In this connection we referred to the case of the RAF officer, Wraight, and our understanding that his trial would be based on this presumption. Again we believe such a presumption would not be accepted by U. S. courts.

3. Mr. Wilson and Mr. Kitchin appeared to accept our position that we really could not pursue our problem on the basis of the British law and practice and expressed some surprise that the British practice was so different from that in this country. We then gave specific examples of some of the problems we have run into, particularly the Kiernan case. Both Messrs. Wilson and Kitchin expressed considerable concern about the lack of protection that this case and others indicated and asked what could be done to remedy the situation. We pointed out that some legislation had been obtained which probably gave some added protection, namely in the field of COMINT, section 798, Title 18, U. S. C.; the espionage portions of the Atomic Energy Act concerning Restricted Data; and certain portions of the NASA act. We also mentioned that we had been studying the type of statute applicable to the Department of Commerce which prohibits employees giving out certain information, such as trade secrets, etc., which the Secretary determines is not to be released until a certain time and that this type of statute does not require exposure of the information to be protected in open court. We said we had certain suggestions for legislation to give adequate protection in the field of intelligence and went into a general discussion of what we thought might help. Mr. Kitchin asked if the conflict of interest statutes couldn't have some bearing, apparently thinking of the two-year prohibition on ex-employees dealing with the Government and the current legislation before their committee. We said we felt this was really dealing with a different problem, but Mr. Kitchin returned to it apparently with the thought that you could put some sort of prohibition on ex-employees talking

about anything gained during their employment. We said we felt this would probably not be acceptable to the U. S. courts, and Mr. Wilson seemed to agree with this position. However, both Mr. Wilson and Mr. Kitchin appeared to want us to find a way of broadening our proposals to minimize the requirements of proof and try to raise presumptions by legislation to give better protection to the information involved. We raised the practical and political problems generally in seeking additional legislation, pointing out how it had been obtained by AEC and NASA. They agreed that there may be problems but felt that some work could be done with certain members of the Congress to inform them of the weakness of the protection given by present statutes. Mr. Wilson suggested an article publicizing this, but we all agreed that to advertise the weakness of the protection could be dangerous. They, therefore, asked if we could give them in unclassified form and without names or detailed information some cases like the Kiernan case which they could discuss with members of the Congress they felt might be helpful. They said that if we came forward with proposals for legislation which could emphasize the protection of military intelligence as well as the sources and methods it might be possible to have this considered as a problem for the Armed Services Committee as opposed to the Judiciary, particularly if it could be tied to some other appropriate legislative proposal before their committee.

4. There is no question the congressmen were most interested and concerned and want very much to help the Executive Branch find a way to give better protection to properly classified information.

s/ Lawrence R. Houston

LAWRENCE R. HOUSTON
General Counsel

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SENDER WILL CHECK CLASSIFICATION TOP AND BOTTOM

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CENTRAL INTELLIGENCE AGENCY

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	ACTION		DIRECT REPLY		PREPARE REPLY
	APPROVAL		DISPATCH		RECOMMENDATION
	COMMENT		FILE		RETURN
	CONCURRENCE		INFORMATION		SIGNATURE

Remarks:

You may wish to show this to the Director and General Cabell.

LRH

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO.	DATE
General Counsel 22[illegible] East	31 MAY 1960 5727/60

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FORM NO. 237 Replaces Form 30-4 which may be used. (40)

1 APR 55

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MEMORANDUM FOR: THE DIRECTOR

Attached is a proposed letter to Gordon Gray on the subject of the espionage acts which you discussed with him a short while ago. It forwards some proposals for additional legislation in this field which we have drafted. I held the letter until we could get the reaction of Congressmen Wilson and Kitchin to our briefing on this subject, and this is now reflected in the final paragraph of the letter. Recommend signature.

STAT

LAWRENCE R. HOUSTON
General Counsel

31 May 1960
(DATE)

FORM NO. 101 REPLACES FORM 10-101
1 AUG 54 WHICH MAY BE USED.

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